

REMARKS

By this Amendment, claims 1-6, 10-13, 29, 39 and 45 are amended, and claim 46 is added. Accordingly, claims 1-33, 37 and 39-46 are pending. Claims 17-26, 31-33, 37 and 44 have previously been withdrawn from consideration. Reconsideration of the present application is respectfully requested.

Applicants gratefully acknowledge that the Office Action indicates that claims 3-16, 30 and 39-43 contain allowable subject matter. The amendments to claims 29 and 39 are presented to correct minor informalities. Claim 45 is amended to correspond to the changes with respect to claim 1. The subject matter of claim 3 is rewritten in independent form and presented in new claim 46.

An Information Disclosure Statement with Form PTO-1449 was filed in the above-referenced patent application on August 10, 2001. Applicants did not receive from the Examiner a copy of the second page of the Form PTO-1449 initialed to acknowledge the fact that the Examiner has considered the disclosed information. The Examiner is requested to initial and return to the undersigned a copy of the Form PTO-1449.

I. Restriction Requirement

The Office Action maintains its requirement for Election of Species. The Election of Species Requirement dated July 16, 2002 failed to state any reasons in support of its assertion. In response, Applicants provisionally, elected a species with traverse. The Office Action dated March 17, 2003 states that the "claims include limitations directed to the six embodiments and infringement of any one of the six embodiments would not result in infringement of the remaining embodiments.

Applicants respectfully assert that the reasons set forth for maintaining the requirement for Election of Species is improper. It is also respectfully submitted that the subject matter of all species is sufficiently related that a thorough search for the subject matter of any one species would encompass a search for the subject matter of the remaining species. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that “if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions” (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office. Withdrawal of the Election of Species Requirement is respectfully requested.

In addition to the arguments above, the Office Action indicates that claim 14 is allowable. Withdrawn claims 17-26 depend from claim 14. Accordingly, Applicants respectfully request the Examiner to rejoin claims 17-26.

II. The Claims Satisfy All Formal Requirements

The Office Action objects to claims 3-7 and 10-13 as indefinite under 35 U.S.C. §112, second paragraph. Claims 3-6 and 10-13 are amended to obviate the objection. Accordingly, withdrawal of the objection to the claims is respectfully requested.

III. The Claims Define Allowable Subject Matter

The Office Action rejects claims 1, 2 and 45 under 35 U.S.C. §102(b) as unpatentable over U.S. Patent No. 5,910,138 to Sperko et al. (“Sperko”); and claims 27-29 under 35 U.S.C.

§103(a) as unpatentable over U.S. Patent No. 4,420,097 to Motsenbocker in view of the “TFO Product Sheet.” These rejections are respectfully traversed.

A. Rejection of Claims Under 35 U.S.C. §102

With respect to claim 1, Sperko does not disclose a portable flask including the combination of a first spout having “each of said first outer surface and said second outer surface being configured to be sealed into said perimeter seal between said first side surface and said second side surface; and a second spout sealed in one of said first side surface and said second side surface.”

Instead, Sperko discloses that the “outlet port 30 may include a flange 34 which is inserted in its desired final position between the front and rear sheets 12 and 14 and fluidly connected with the outlet compartment 24,” col. 17, lines 1-5. In addition, Sperko discloses that “each of the sacrificial port 72 and 74 includes tapered mounting flanges 76 which are interposed and sealed between the front and rear sheets 12 and 14 along the common peripheral edge 16 of the first side 27,” col. 17, lines 59-62. Thus, Applicants have found no indication in Sperko of a second spout sealed in one of said first side surface and said second side surface, as recited in independent claim 1.

As pointed out in MPEP §2131, “[t]o anticipate a claim, the reference must teach every element of the claim.” Thus, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).”

B. Rejection of Claims Under 35 U.S.C. §103

With regard to claim 27, neither Motsenbocker nor the TFO Product Sheet disclose a portable flask including the combination of “a first spout having a first base sealed in said perimeter seal,” and “a second spout sealed in one of said first panel and said second panel.”

Instead, Motsenbocker discloses that the container 14 has bonding joints 31 and 33 along three sides of the container 14, see Figs. 3 and 4. No joint is shown along the side of the container where the numeral 15 and its tag line appear in FIG. 3. The tube 16 extends out of or away from the container 14 from that side of the container 12 without a joint 31, 33. That is, the tube 16 and its un-numbered connector are fastened to the container along an edge void of any perimeter seal.

The Office Action admits that “it is unclear how the tube 16 is secured to the perimeter of the pouch.” Applicants agree that Motsenbocker does not clearly show or describe how the tube 16 is secured to the perimeter of the pouch. However, it is clear that the tube 16 does not connect on a side where joints 31, 33 are found, *see* Fig. 2. Thus, one skilled in the art would understand Motsenbocker to be teaching a construction in which a tube connection is made or a spout is attached at a side which does NOT have a bonding joint, i.e., joints 31, 33.

The Office Action asserts that the TFO Product Sheet makes up for the deficiencies of Motsenbocker. However, the TFO Product Sheet discloses a structure with only one spout mounted in the perimeter at the top of the container. Thus, the TFO Product Sheet fails to teach or suggest multiple spouts.

In sum, Motsenbocker fails to show a spout located in a side having a perimeter seal or in a perimeter seal, and in fact, teaches away from placing the spout on a side with a perimeter seal.

The TFO Product Sheet, on the other hand, fails to teach or suggest a container having multiple spouts, or even a spout in a panel or surface of the container. Thus, the only way one skilled in the art would have been motivated to modify Motsenbocker to meet the limitations of the claims is through impermissible hindsight. Accordingly, none of the applied references teach or suggest each feature of claim 27.

As a result, Applicants respectfully submit that there is no motivation taught or suggested by the cited references to modify the teachings of Motsenbocker with the teachings of the TFO Product Sheet to obtain the claimed invention. MPEP §2141, under the heading “Basic Considerations Which Apply to Obviousness Rejections,” points out that “the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.” *See also Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 229 USPQ 182 (Fed. Cir. 1986). The Federal Circuit has clearly held that “the motivation to combine references cannot come from the invention itself.” *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 21 F.3d 1068, 30 USPQ 2d 1377 (Fed. Cir. 1993).

MPEP §2143.01 instructs that “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990).” Absent any teaching or suggestion to adapt the teachings of Motsenbocker to meet the claimed invention, the rejection under 35 U.S.C. §103(a) is improper.

Accordingly, Applicants respectfully assert that the rejections under 35 U.S.C. §§102 and 103 should be withdrawn because the applied references, either individually or in combination, do not teach or suggest each feature of independent claims 1 and 27.

MPEP §2143.03 instructs that “[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 409 F.2d 981, 180 USPQ 580 (CCPA 1974).”

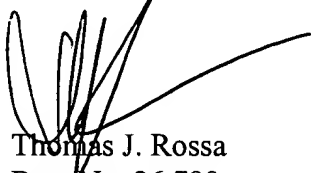
For at least these reasons, it is respectfully submitted that independent claims 1 and 27 are patentable over the applied references. The remainder of the claims that depend from independent claims 1 and 27 are likewise patentable over the applied references for at least the reasons discussed above, as well as for the additional features they recite.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-33, 37 and 39-45 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,



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